

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF MISSOURI

WINDERMERE DEVELOPMENT COMPANY, LLC) CASE NO. 10-60066  
Debtor. ) Chapter 7

**TRUSTEE'S MOTION FOR ORDER APPROVING SETTLEMENT  
AGREEMENT AND OPPORUNITY FOR HEARING WITH NOTICE**

Kevin Checkett, as Trustee in these Bankruptcy Code proceedings ("Trustee"), files with this notice his Motion for Order Approving Settlement Agreement ("the Motion"). The Motion proposes to settle the counterclaim of Windermere Development Company LLC and others against the counterclaim defendants named in litigation pending in the Circuit Court of Camden County, Missouri, Case number 06CM-CC00393. The counterclaim defendants are certain individuals who previously purported to be trustees of Windermere Baptist Conference Center, Inc. a Missouri non-profit corporation; Robert Collins, an individual purporting to be a member of the Missouri Baptist Convention, a Missouri unincorporated association; and the Executive Board of the Missouri Baptist Convention, a Missouri nonprofit corporation ("Plaintiffs" or "Counterclaim Defendants").

**Background**

1. Litigation was commenced in the Circuit Court of Camden County, Missouri by the Plaintiffs against William Jester, now deceased; Windermere Development Company, LLC, the debtor in this proceeding; Jester Capital Management, LLC; The Estates at Windermere, LLC; The Lodges at Windermere, LLC; The Villas at Windermere, LLC; Resource Development, Inc.; RDI LLC; Windermere Baptist Conference Center, Inc.; California Plain of Church Finance, Inc.; Reliance Trust Company; San Joaquin Bank; 1<sup>st</sup>

Centennial Bank; National City Bank of the Midwest f/k/a Allegiant Bank; Consolidated Mortgage, Inc.; and others. The nature of the litigation commenced by the Plaintiffs against the defendants, including the debtor was, among other things, to quiet title to 1,300 acres of land with lakefront at The Lake of the Ozarks, Camden County, Missouri. The Plaintiffs alleged fraud against various defendants. Certain of the defendants, including debtor Windermere Development Company, LLC, filed counterclaims against the Plaintiffs/Counterclaim Defendants, alleging malicious prosecution, abuse of process, tortious interference with a contract, slander of title, injurious falsehood, negligence, and civil conspiracy. The Counterclaim Plaintiffs sought \$15,000,000.00 against the Counterclaim Defendants in the counterclaim.

### **Proposed Settlement**

2. Subject to the Court's approval, after notice and opportunity for hearing in accordance with Bankruptcy Code §102(1) and Bankruptcy Rules 2002(a)(3) and 9019(a), it is respectfully suggested that the court's approval of the proposed settlement will serve the best interests of the estate because the Trustee deems the settlement to be equitable and in the best interest of the estate based upon documentary evidence of defenses, probability of success, difficulty in collection, complexity of the case, expense in prosecution, delay in closing the case and the interest of creditors.

3. The Trustee's conclusions regarding this settlement are influenced by at least the following facts: (a) that Counterclaim Plaintiffs' main witness, William Jester, passed away on June 2, 2010; (b) that the bad economy would depress any jury verdict; (c) that the jury may include individuals who opposed further development around the Lake of the Ozarks, the prevention of which was a significant part of Counterclaim Plaintiffs' alleged damages; (d) that Counterclaim Defendants made the same settlement offer at a formal mediation ten months ago (November 2011) and have refused to subsequently increase their offer; (e) that Counterclaim Defendants apparently oppose their insurer settling the case on these terms; and (f) the additional costs associated with proceeding to trial would have significantly eroded whatever verdict amount a jury might have awarded.

4. The Counterclaim Defendants will pay the sum of \$500,000.00 to settle the counterclaims of the Counterclaim Plaintiffs. The \$500,000.00 shall be reduced by the contractual contingency attorneys' fee of 30% of the gross proceeds, plus reimbursement of litigation costs of \$9,777.44. This Court entered its order on August 17, 2010 allowing the Trustee to employ Jim Shoemake, Eric Walter, and Burton Shostak as special litigation counsel upon these terms. The net settlement will then be divided one-half to the probate Estate of William Jester and one-half to this bankruptcy estate of Windermere Development Company, LLC. The Trustee believes this fifty percent (50%) division of the net proceeds with the Estate of William Jester is fair and equitable, given that both Mr. Jester and the bankrupt entity suffered significant damages as a result of Counterclaim Defendants actions, as alleged in the First Amended Counterclaim

**Procedure for Objection**

5. Any response or objection to the motion must be filed within 21 days of the date of this notice, pursuant to Local Rule 9013-1C, with the Clerk of the United States Bankruptcy Court. Parties represented by an attorney shall file electronically at [<https://ecf.mowb.uscourts.gov>](https://ecf.mowb.uscourts.gov). Pro se parties shall mail filings to: United States Bankruptcy Court, Western District of Missouri, 400 East 9<sup>th</sup> Street, Room 1510, Kansas City, MO 64106. Pursuant to Rule 9013-1D, responses shall address the merits of the motion and, if applicable, set out actions to remedy the particular problem. The Court will serve such response electronically on the trustee, debtor's attorney and all other parties to the case who have registered for electronic filing.

If a response is timely filed, a hearing will be held on a date and time determined by the Court. Notice of such hearing will be provided to all parties in interest. If no response is filed within 21 days, the Court may enter an Order without further notice.

6. If no objections are timely filed and served, the court may rule the motion without further notice or opportunity for hearing.

7. The Trustee reserves the right to withdraw this settlement at any time prior to the Court's final judgment on this motion and notice.

WHEREFORE, the Trustee prays that this Court approve the compromise and settlement as stated within this Notice and Motion.

/s/Kevin Checkett  
J. Kevin Checkett, Trustee  
517 S. Main Street  
P. O. Box 409  
Carthage, Missouri 64836  
417-358-4049 telephone  
417-358-6341 facsimile

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was served electronically to those parties who have entered an appearance in the court's Electronic Court Filing (ECF) System and conventionally, via first-class mail, postage prepaid, to those parties below, if any, who have requested notice but are not participating in the ECF System, to **all creditors on the debtor's mailing matrix**, to **WINDERMERE COMPANY**, 1343 EAST KINGSLEY, STE G, SPRINGFIELD, MO 65804 and to **United States Trustee**, Room 3440, 400 E. 9th St., Kansas City, MO 64106 on the date entered on the court's docket.

/s/Kevin Checkett  
Attorney of Record